

UNITED STATES OF AMERICA : CRIMINAL ACTION
 :
 v. :
 :
 TARIQ MITCHELL : NO. 10-146-1

A defendant has no "'absolute right'" to withdraw his plea of guilty. See, e.g., United States v. Trott, 779 F.2d 912, 915 (3d Cir. 1985) (quoting Government of Virgin Islands v.

Berry, 631 F.2d 214, 219-20 (3d Cir. 1980)). Instead, the defendant bears the burden of demonstrating a "fair and just reason" for the withdrawal. Fed. R. Crim. P. 11(d)(2)(B). In determining whether the purported reason is "fair and just," this court must consider three factors: (1) whether Mitchell asserts actual innocence; (2) the strength of his reasons for withdrawing the plea; and (3) whether the withdrawal would result in prejudice to the government. Berry, 631 F.2d at 220.

Where a defendant seeks to withdraw his guilty plea based on ineffective assistance of counsel, he must demonstrate that his attorney's advice was "unreasonable under prevailing professional norms" and that he suffered "sufficient prejudice" as a result. United States v. Day, 969 F.2d 39, 42, 44 (3d Cir. 1992). As our Court of Appeals has stated, "[a] shift in defense tactics, a change of mind, or the fear of punishment are not adequate reasons to impose on the government the expense, difficulty, and risk of trying a defendant who has already acknowledged his guilt by pleading guilty." United States v. Brown, 250 F.3d 811, 815 (3d Cir. 2001).

Mitchell has not asserted his innocence. Furthermore, he not produced any credible evidence in support of his claims that he was coerced into signing the plea agreement and that his counsel was ineffective. At his change of plea hearing on October 27, 2010, this court engaged Mitchell in a lengthy

colloquy regarding the factual basis for his guilty plea and his understanding of the consequences of pleading guilty. He conceded his guilt, and the court found he knowingly and voluntarily waived his right to a trial. Because Mitchell initially entered his guilty plea on the day of trial, after counsel selected jurors and assembled witnesses, and now seeks to withdraw his plea less than two weeks before sentencing, any withdrawal would result in prejudice to the government.

Accordingly, the motion of Mitchell to withdraw his guilty plea will be denied.